

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CARLOS ALBERTO PORTILLO
Petitioner #1942599
vs.
DIRECTOR, TDC-CID
Respondent

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CIVIL ACTION NO: 4:18cv41

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
APR 27 2018

BY
DEPUTY

May it please the Court, ~~the ORDER~~ providing fair

notice to Petitioner and the opportunity to present why he should be entitled to submit 2254 Habeas Corpus writ.

IF YOUR HONOR PLEASE, petitioner Portillo presents a credible claim of actual innocence that entitles him to equitable tolling of 1-year limitation period and review of his petition on the merits. See Murray v. Carrier, 477 U.S. 496, 91 L.Ed 2d 397, 106 S. Ct. 2639 (1986).

Petitioner demonstrates that the constitutional violations he alleges "ha[ve] resulted in the conviction of one who is actually innocent" , such that federal court's refusal to hear the defaulted claims would be a "miscarriage of justice." See Schulp v. Delo, 513 U.S. 298, 326, 115 S. Ct. 851 (1995).

Petitioner Portillo contends that constitutional error deprived him evidence that would have established his innocence and the 397TH Judicial District Court, Grayson County, Texas, has failed to give him due process in terms of a fair hearing in adjudicating the merits of his actual innocence.

As in the case of House v Bell, 547 U.S. 518, 165 L. Ed 2d 1, 126 S. Ct. 2064 (2006), Mr. Portillos case doesn't show a conclusive exoneration. Some aspects of the state's evidence.....still support an inference of guilt. Yet, the convicting court's failure to provide a full and fair hearing deprives

petitioner his right to show the court his [open] plea did not vitiate the harm from defense counsel's deficient performance,,See Missouri v. Frye, No. 10-444 - writ of Certiorari; see also Lafler v. Cooper, No. 10-209 - writ of Certiorari: Petitioner was denied the right to show central forensic proof never connected petitioner Portillo to the crime - examines of blood and semen, denied petitioner - has been called into question; Whereas, had petitioner been granted a jury trial - just as he believed he was agreeing to - the jury would have heard the conflicting issues, seen exculpatory scientific evidence - it is more likely than not that no reasonable juror viewing the record as a whole would lack reasonable doubt.

the question is not whether petitioner Portillo was prejudiced by his attorney's deficient performance, but whether all the evidence considered together, can prove that petitioner is actually innocent, so that no reasonable juror would vote to convict him.

CONCLUSION

For the reason stated, petitioner prays to satisfy the gateway standard set forth in Schulp, with this Court, and prays he may proceed according to Title 28 United States Constitution Section 2254 for habeas corpus relief, or, any other relief this Court may deem just and proper under the circumstances.

respectfully Submitted, Carlos Alberto Portillo
Carlos Alberto Portillo,
petitioner, pro se #1942599
Hughes Unit, Rt. 2 Box 4400
Gatesville, Texas 76597

Currently, prison unit-wide lock-down (for the past 3-weeks) deprives petitioner [legal] access to Law Library time, Etc., pls. accept my tardiness.

CERTIFICATE OF SERVICE

I CERTIFY that on this 19 day of APRIL, 2018,
I served a true and correct copy of the foregoing:

Response to Court's ORDER to present my position for Toll Limitation
to the CLERK of the U.S. District Court Eastern District of Texas,
104 N. Third , Lufkin, Texas 75901, by submitting same to designated
civilian employee of the Texas Department of Criminal Justice for
prompt processing and mailing by authorized prison personel within the
facility mailroom, with sufficient First Class postage affixed, and it
shall be deemed FILED as of the above date.

Respecfully, Carlos Alberto Portillo

Carlos Alberto Portillo, petitioner pro se
, TDCJ #1942599, Hughes Unit, Rt. 2 Box
4400, Gatesville, Texas 76597

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WED 25 APR 2018 PM

U.S. DISTRICT COURT
Eastern District of Texas
104 N. Third
Lufkin, Texas
75901

" LEGAL MAIL "